IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

BEN CHENAULT, individually and for CMCO, LLC on behalf of others similarly situated,	)	
Plaintiff,	)	CASE NO.: CV-10-PWG-1139-S
v.	)	
TRANSOCEAN, LTD., BP, PLC, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., TRANSOCEAN DEEPWATER, INC., BP PRODUCTS NORTH AMERICA, INC., BP AMERICA; CAMERON INTERNATIONAL CORPORATION and, HALLIBURTON ENERGY SERVICES, INC.,	)	
Defendants.	)	

MOTION FOR STAY OF PROCEEDINGS PENDING TRANSFER BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Defendant BP Products North America, Inc. ("BP") respectfully moves this Court to stay further proceedings in the above-captioned action pending a final determination by the Judicial Panel on Multidistrict Litigation ("JPML") regarding whether this action, and more than sixty-five related actions, should be centralized pursuant to 28 U.S.C. § 1407 and, if so, in which forum.[1] In support of this Motion, BP states:

BACKGROUND

1. This case is one of at least seventy (70) filed in various state and federal courts in the southeastern United States arising out of an explosion and fire onboard Transocean's

[1] BP makes this motion for the limited purpose of seeking a stay pending the JPML's determination of whether this action should be consolidated pursuant to 28 U.S.C. § 1407. BP specifically reserves, and does not waive, any and all applicable defenses to the claims brought in this action.

Deepwater Horizon drilling rig on April 20, 2010, and the ensuing oil spill from the BP well located on Mississippi Canyon Block 252 (the "Deepwater Horizon Incident").

2. Since April 20, 2010, numerous plaintiffs have filed individual or class actions alleging personal injuries, injury to their business or commercial interests and/or injury to their real or personal property arising from the Deepwater Horizon Incident. At least 59 of these suits are styled as class actions. The actions are dispersed across more than seven jurisdictions in the southeastern United States, including the Western District of Louisiana, the Eastern District of Louisiana, the Northern District of Florida, the Southern District of Mississippi, and the Southern District of Alabama.

3. On May 7, 2010, BP Exploration & Production Inc. ("BPXP") filed a motion pursuant to 28 U.S.C. § 1407 to consolidate the many cases related to the Deepwater Horizon Incident before one Multidistrict Litigation Court. See Motion to Transfer filed in In Re: Deepwater Horizon Incident Litig., MDL Docket No. __. (A copy of the Motion to Transfer and Memorandum is attached hereto as Exhibit A.) Plaintiff and BPXP's co-defendants are expected to file their responses to the motion by a date to be determined in June 2010. Although the motion has not been formally calendared, the Panel is expected to conduct a hearing on July 29, 2010, and the BP Defendants' motion is expected to be heard at that time.

4. This case was included in the Schedule of Actions that BPXP asked the JPML to coordinate and consolidate in their motion. (A true and correct copy of the Schedule of Actions filed with the JPML is attached hereto as Exhibit B). This case is appropriate for transfer and coordination in an MDL proceeding because it involves "one or more common questions of fact" with the other cases submitted to the JPML for transfer and consolidation. 28 U.S.C. § 1407(a).

The other cases contain similar factual allegations and name many of the same defendants. These actions will necessarily involve much of the same discovery and pre-trial motion practice.

ARGUMENT

5. This case should be stayed pending the JPML's final determination concerning the transfer motion and choice of forum. A stay will prevent needless waste of time and resources of the parties and the Court. Moreover, it will protect the defendants from being required to litigate identical issues in multiple jurisdictions, with the danger of inconsistent rulings. If the related actions are not consolidated, plaintiffs will not have suffered any prejudice as a result of the temporary stay requested here. The JPML is expected to take up the transfer and consolidation motion in less than three months.

6. The power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the cases on its docket with the economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton v. Jones*, 620 U.S. 683, 706 (1997) ("The District Court has broad discretion to stay proceedings as incident to its power to control its own docket."). Under the circumstances present here, "stays are frequently granted to avoid duplicative efforts and preserve valuable judicial resources." *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99 C 5182, 1999 WL 1044923, at *1 (N.D. Ill. Nov. 12, 1999). Indeed, the stay sought here serves the very "purpose of such [MDL] transfers . . . to further judicial economy and to eliminate the potential for conflicting pretrial rulings." *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998).

7. Numerous federal courts, including courts within this judicial district, have recognized that efficiency and uniformity demand the stay of an action pending the JPML's resolution of a motion to transfer and consolidate in an MDL proceeding. *See, e.g., Maiben v.*

CSX Transp., Inc., No. 09-0125-WS-B, 2009 WL 1211186, at * 1 (S.D. Ala. May 1, 2009) ("[S]taying this action pending transfer by the MDL Panel would promote the interests of efficiency and judicial economy, would mitigate the possibility of inconsistent results between sister courts, and would not prejudice the parties in any respect."); *Boudin v. Residential Essentials, LLC*, No. 07-0018-WS-C, 2007 WL 2609510, at *2 (S.D. Ala. Sept. 6, 2007) (declining to rule on motion to dismiss until after JPML decided transfer motion); *Thomas v. Ameriquest Mortg. Co.*, No. 07-0652-WS-C, 2007 WL 3287842, at *1 (S.D. Ala. Nov. 5, 2007) (granting motion to stay and noting that "the interests of promoting judicial efficiency, avoiding inconsistent results between sister courts, and avoiding prejudice to the parties" weighed in favor of allowing the MDL to decide pending motions); *Louisiana Stadium & Exposition Dist. v. Financial Guaranty Ins. Co.*, No. 09-235, 2009 WL 926982, at * 1 (E.D. La. Apr. 2, 2009) (granting stay pending JPML's disposition of motion to transfer and consolidate); *Kennedy v. Novartis Pharmaceuticals, Corp.*, No. CIV.A. 02-2331, 2002 WL 31051601, at *1 (E.D. La. Sept. 12, 2002) ("[T]he interests of judicial economy will best by served by a temporary stay in these proceedings pending a ruling by the Judicial Panel on Multidistrict Litigation."); *Falgoust v. Microsoft Corp.*, No. CIV.A. 00-0779, 2000 WL 462919, at * 2 (E.D. La. Apr. 19, 2000) (short stay to allow JPML to consider transfer motion would best promote "the interests of judicial economy"); *Aikins v. Microsoft Corp.*, No. Civ.A. 00-0242, 2000 WL 310391, at *1 (E.D. La. Mar. 24, 2000) ("Consistency and economy are both served by resolution of [common] issues by a single court after transfer by the JPML."); *Ayers v. ConAgra Foods, Inc.*, No. H-08-3723, 2009 WL 982472, at * 1 (S.D. Tex. Apr. 9, 2009) ("Judicial economy is served by a stay pending transfer if the issues involved in the [instant] motion are likely to arise in the cases that have been or will be transferred to the MDL transferee court."); *Morales v. Merck & Co., Inc.*, No. H-07-

0599, 2007 WL 655714, at *1 (S.D. Tex. Feb. 28, 2007); *Gonzalez v. Am. Home Products Corp.*, 223 F. Supp. 2d 803, 806 (S.D. Tex. 2002) (granting stay to await ruling of JPML to avoid "duplicating the work of the MDL court"); *Gavitt v. Merck & Co., Inc.*, No. 2:08-cv-755-FtM-UA-DNF, 2008 WL 4642782, at *1-2 (M.D. Fla. Oct. 20, 2008) (granting stay pending disposition of JPML motion to transfer).

8. Courts traditionally weigh three factors to determine whether a stay should be ordered: (1) hardship to the moving party if a stay is not granted; (2) the judicial resources saved by avoiding duplicative litigation; and (3) potential prejudice to the non-moving party. *Louisiana Stadium & Exposition Dist.*, 2009 WL 926982, at *1; *Falgoust*, 2000 WL 462919, at *2; *Rivers v. Walt Disney Co.*, 980 F. Supp. 1360, 1360 (C.D. Cal. 1997). Each of these factors weigh heavily in favor of a stay in this case.

9. ***First***, BP faces a significant risk of inconsistent pretrial rulings and duplicative waste of party resources if a stay is not granted. This case, like many others subject to the pending JPML transfer motion, has been brought against the same defendants based on the same facts and raises common questions for discovery and trial including (i) the cause of the explosion on the Deepwater Horizon, (ii) the cause of the oil spill following the explosion, and (iii) the acts taken by each of the defendants. BP "would suffer a considerable hardship and inequity if forced to simultaneously litigate multiple suits in multiple courts." *Falgoust*, 2000 WL 462919, at *2. The stay requested would alleviate the risk of BP being subjected to multiple pleading and discovery requirements, and potentially conflicting or inconsistent rulings on pretrial matters.

10. ***Second***, a stay will conserve judicial resources and prevent inconsistent adjudications. The complexity of many of the factual and legal issues that are likely to arise across some or all of the cases identified in Exhibit B will "require the mastery of several

procedural and substantive issues" that is best acquired by a single court to avoid the unnecessary expenditure of judicial resources. *Thomas*, 2007 WL 3287842, at *1; *see also Louisiana Stadium & Exposition Dist.*, 2009 WL 926982, at *1 (waste of judicial resources weighed heavily in favor of a stay where "the Court would have to spend time familiarizing itself with the intracacies of a case involving complex financial transactions that will ultimately be heard by another judge."). As previously discussed, a stay will also prevent inconsistent pre-trial rulings that establish conflicting standards of conduct or discovery procedures.

11. ***Third***, the short requested stay — no longer than necessary for the JPML to rule on the pending motion and transfer and consolidate the cases in an MDL proceeding — will not prejudice the plaintiff here. *See Falgoust*, 2000 WL 462919, at * 2 (granting stay where "[p]laintiffs have failed to show any significant prejudice they would suffer, beyond the slight delay pending the JPML decision."). Nothing in the complaint suggests that a stay lasting no more than a few months would impose significant prejudice, nor is there any indication that evidence or witnesses would be lost during such a short stay. Further, even if plaintiff would be prejudiced by a brief stay, that minimal prejudice is offset by the obvious benefits of coordinated proceedings. *See, e.g., Rivers*, 980 F. Supp. at 1362 n.5 ("[E]ven if a temporary stay could be characterized as a delay that would be prejudicial . . . there are still considerations of judicial economy that outweigh any prejudice.").

CONCLUSION

12. For all of the foregoing reasons, BP respectfully moves for an order temporarily staying proceedings in this action until the JPML decides the pending motion to transfer and consolidate cases pursuant to 28 U.S.C. § 1407.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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